

**ORDINANCE NO. 08-30**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 18 ENTITLED "BUSINESSES" OF THE CODE OF ORDINANCES AND IN PARTICULAR, ARTICLE III ENTITLED "COIN- OR CURRENCY-OPERATED MACHINES", BY REVISING THE CHAPTER TITLE TO "AMUSEMENT MACHINES"; REVISING DEFINITIONS; REVISING HIALEAH CODE § 18-64 ENTITLED "ALCOHOLIC BEVERAGES" TO CLARIFY LANGUAGE RELATING TO TYPE 2 AMUSEMENT MACHINES LOCATED WHERE ALCOHOLIC BEVERAGES, BEER OR WINE ARE CONSUMED AND SOLD FOR CONSUMPTION ON THE PREMISES; BY REVISING AND RENAMING HIALEAH CODE § 18-65 NOW ENTITLED "LICENSING SYSTEM" TO PROVIDE LICENSING OF ALL AMUSEMENT MACHINES FOR BUSINESS OWNERS AND TO PROHIBIT THE TRANSFER OF SUCH LICENSES TO NEW BUSINESS LOCATIONS BUT ALLOW RELOCATION OF MACHINES THROUGH ISSUANCE OF NEW LICENSES; BY REVISING HIALEAH CODE § 18-71 ENTITLED "SEIZURE OF MACHINES" TO PROVIDE AUTHORITY TO CITY TO DISPOSE OF OR DONATE SEIZED MACHINES IF UNCLAIMED AFTER 90 DAYS, PROVIDE CHARGES FOR HAULING AND STORAGE OF MACHINES AND NOTICE OF SEIZURE TO AFFECTED PARTIES WITHIN 14 DAYS OF SEIZURE; BY REDUCING THE MINIMUM SQUARE FOOTAGE OF COMMERCIAL SHOPPING CENTERS FROM 100,000 TO 75,000 SQUARE FEET TO ALLOW AMUSEMENT CENTERS; BY LIMITING THE NUMBER OF TYPE 2 AMUSEMENT MACHINES TO 4 AT ANY ONE LOCATION, EXCEPT FOR AMUSEMENT CENTERS; BY ADDING A NEW SECTION, HIALEAH CODE § 18-72 ENTITLED "HOURS OF OPERATION IN INDUSTRIAL-ZONED PROPERTIES" TO LIMIT HOURS OF OPERATION OF TYPE I AMUSEMENT MACHINES AND TYPE II AMUSEMENT MACHINES FROM 7:00 A.M. TO 9:00 P.M. IN

LOCATIONS ON PROPERTIES ZONED INDUSTRIAL; BY ADDING A NEW SECTION, HIALEAH CODE § 18-73 ENTITLED "PAYMENT OF CERTIFICATE OF AUTHORIZATION FEE, PAYMENT AND PERFORMANCE BOND; CRIMINAL BACKGROUND CHECK AND PROOF OF CORPORATE GOOD STANDING FOR MACHINE OWNER OR SUPPLIER HEREUNDER OF TYPE II AMUSEMENT MACHINES" TO REQUIRE MACHINE OWNERS AND/OR MACHINE SUPPLIERS OF TYPE II AMUSEMENT MACHINES TO PAY AN ANNUAL CERTIFICATE OF AUTHORIZATION FEE OF \$2,500; OBTAIN A \$10,000.00 PAYMENT AND PERFORMANCE BOND WITH CITY AS NAMED OBLIGEE AND TO REQUIRE BACKGROUND CHECKS AND CERTIFICATES OF STATUS OF CORPORATE GOOD STANDING FOR ISSUANCE OF CERTIFICATE OF AUTHORIZATION AND RENEWALS FOR THE NON-EXCLUSIVE FRANCHISE TO LEASE, PLACE OR CAUSE TO BE PLACED TYPE II AMUSEMENT MACHINES WITHIN THE CITY; AND BY ADDING A NEW SECTION, HIALEAH CODE § 18-74 ENTITLED "ADDITIONAL PENALTY" TO PROVIDE A ONE-YEAR PROHIBITION FROM OPERATING ITS BUSINESS IF PROPERTY, BUSINESS OWNER, TENANT OR SUPPLIER OF AN AMUSEMENT MACHINE VIOLATES SECTIONS OF THIS ARTICLE; BY CREATING LIMITATIONS FOR LOCATION AND NUMBER OF TYPE II AMUSEMENT MACHINES WHERE ALCOHOLIC BEVERAGES, BEER OR WINE ARE CONSUMED OR SOLD FOR CONSUMPTION ON THE PREMISES; AND BY PROVIDING MISCELLANEOUS REGULATIONS AND REVISIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, it is in the best interest of health, safety and general welfare of the community and the residents of the City of Hialeah to regulate the operation of coin-operated and currency-operated amusement machines within the City; and

**WHEREAS**, the purpose and intent of this ordinance is to find an appropriate regulation of such machines that operate in conjunction with the sale or consumption of alcoholic beverages, without impeding enforcement of criminal offenses and city licensing laws.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** Chapter 18 entitled "Businesses" of the Code of Ordinances of the City of Hialeah, Florida, particularly Article III. Coin- or Currency-Operated Machines, is hereby amended to read as follows:

Chapter 18

**BUSINESSES**

\* \* \*

**ARTICLE III. ~~COIN-OR~~  
~~CURRENCY-OPERATED~~ AMUSEMENT  
MACHINES**

**Sec. 18-61. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Amusement center* means a place of business having at least 50 or more ~~coin-or-currency-operated~~ amusement machines that are operated for the entertainment of the general public as a bona fide amusement facility.

*Operator of ~~coin-or-currency-operated~~ amusement machines* means any person who shall own, operate or control either a type I or type II ~~coin-or-currency-operated~~ amusement machines.

Type I ~~Coin or currency-operated~~ Amusement machines: Any machine, contrivance or device that is set in motion or is permitted to function upon payment of a fee, money, compensation or an exchange of anything of value except as allowed by F.S. § 849.161(1)(a)1., or is permitted to function by insertion of a coin, slug, token, credit card or paper currency that operated by insertion of coin, slug, token, credit card or paper currency which provides for entertainment or amusement of any kind. This definition excludes pinball machines, pool or billiard tables, vending machines, laundry machines, soda machines, kiddie rides, and automatic music machines and skill games.

Type II ~~Adult only coin or currency-operated~~ amusement machine means any machine, contrivance or device that is set in motion or is permitted to function upon payment of a fee, money, compensation or an exchange of anything of value except as allowed by F.S. § 849.161(1)(a)1., or is permitted to function by insertion of a coin, slug, token, credit card or paper currency, and that which depicts an activity that is normally perceived as being an activity primarily for the purposes of parimutuel wagering and/or that is available primarily in a casino setting (i.e. horse racing, dog racing, poker, roulette, slot machines, etc.) or depicting, exhibiting, illustrating, describing or relating to sexual conduct or specified anatomical areas as defined in section 98-1796 of the Code.

[Terms have been listed according to the alphabetical order of the first letter of the revised or renamed term.]

#### **Sec. 18-62. Carnival exception.**

~~Coin or currency-operated~~ Amusement machines operated in conjunction with and under the auspices of a carnival duly licensed by the city to operate within the city shall be exempted from this article.

#### **Sec. 18-63. Amusement centers.**

All amusement centers shall be located in C-2 liberal retail commercial locations (the entire shopping center) ~~which that~~ have floor areas in excess of ~~100,000~~ 75,000 square feet. No amusement center will be permitted within a distance of 1,500 feet from another center. Amusement

centers are exempted from the limitation on the number of type II amusement machines allowed at any one location; provided, however, that the amusement center separates the location of type II amusement machines from type I amusement machines on the premises.

**Sec. 18-64. Alcoholic beverages; limitations.**

~~(a) Prohibition.~~

~~(1) No alcoholic beverages shall be sold and/or consumed in the amusement center.~~

~~(b) No alcoholic beverages shall be sold and/or consumed in an amusement center associated with a bona fide recreational facility.~~

~~(c) Coin-operated and currency-operated, as defined in section 18-61, shall not be located and operated on premises where alcoholic beverages are consumed or where alcoholic beverages are consumed and offered for sale or sold.~~

Type II amusement machines, as defined in section 18-61, shall not be located or operated on premises where alcoholic beverages, beer or wine are consumed or sold for consumption on the premises if the total ground or upper floor space of the service or seating area located on the premises is less than or equal to 850 square feet. Type II amusement machines, as defined in section 18-61, may be located or operated on premises where alcoholic beverages, beer or wine are consumed or sold for consumption on the premises if the total ground or upper floor space of the service or seating area located on the premises exceeds 850 square feet.

**Sec. 18-65. Licenseing system, transfer prohibited.**

~~No license issued under and by the authority of this article shall be transferable, and such license shall be valid only for the operator to whom the license was originally issued.~~

One license for every machine shall be issued to a business owner for each location and if the business owner and property owner is not the same person, the business owner shall provide written notice to the property owner of its intention to operate the machine for that location city prior to the issuance of the license. All licenses must be displayed within public view and access in area within 5 feet from the physical site of the machine. Amusement machine licenses are not transferable. If an amusement machine is relocated, then a new license shall be obtained. The name, address and telephone number of the machine owner must be attached to the front of the machine in a location easily read by machine users with the size of lettering equal to or greater than 12-point type. Prior to issuing a machine city license (business tax receipt) to a business owner, the business owner must present proof of a state amusement machine certificate from the department of revenue and an applicable county business tax receipt.

**Sec. 18-66. Type II amusement machines, limitations.**

Operators of type II amusement machines are subject to the following limitations:

(a) There shall be no more than four type II amusement machines in any permissible business location or site, except as provided in amusement centers or carnivals. The computation of the number of machines shall include counter amusement machines and standing amusement machines.

(b) An operator shall not locate and operate a type II amusement machine within a room or enclosed area not open to the general public. If a room where a type II machine is being operated, is locked or barricaded, a rebuttable presumption is created that the area is not open to the general public in violation of this subsection.

**Sec. 18-667. License revocation.**

If the person to whom a license has previously been issued under this article shall thereafter be convicted or plead guilty or nolo contendere to any felony involving

~~gambling, fraud, theft, controlled substances, or a violation of any federal, state, county or municipal statute or ordinance criminal law, including misdemeanors, involving gambling or the sale, transportation, possession distribution or use of amusement machines or gambling machines illegal drugs or a conspiracy involving any of such (either gambling or illegal drugs), the license shall immediately thereafter be revoked by the city council after a public hearing, notice of which shall be served in writing upon the licensee at least 15 days before the date set for the hearing, if the public hearing establishes that the facts set forth in this section requiring a revocation of the license do indeed exist.~~

**~~Sec. 18-67. Operation of amusement center associated with bona fide recreational facility.~~**

~~Amusement centers licensed in bona fide recreational facilities for more than five but less than 50 amusement machines must be operated in accordance with subsection 18-64(c).~~

**Sec. 18-68. Minors prohibited from playing certain machines.**

(a) ~~Coin or currency-operated machines which fall under the definition of adult only machines~~ Type II amusement machines shall each bear a sticker, at least three inches in diameter, which clearly and legibly says "play prohibited by minors."

(b) It shall be the responsibility of the licensee to ensure that minors are prohibited from playing such machines at all times. Failure of the licensee to monitor and prohibit play by minors of such designated machines shall be sufficient cause to subject the licensee to revocation of his or her license under this article.

**Sec. 18-69. Gambling.**

No person or operator licensed under this article shall permit any ~~coin or currency-operated type I amusement machine or type II amusement machine~~ to be used for gambling or games of chance so as to be in violation of F.S. ch. 849. ~~The intent and purpose of this section is to license~~

~~the operation of coin and currency-operated machines for amusement and skill purposes only.~~

**Sec. 18-70. Prize restrictions.**

It shall be unlawful for any person ~~to operate to engage in the operation of any coin or currency-operated~~ a type I or type II amusement machine, either as operator or licensee thereof, where there is a prize or regard given other than automatic replays granted by the machine or except as allowed by F.S. § 849.161(1)(a)1.

**Sec. 18-71. Seizure of machines.**

(a) If any license fee required by this article is not paid by any operator or if unlicensed machines are placed within the city, authority is given and granted to the licensing administrator to seize any of the operator's machines for such payment. After diligent search, the licensing administrator shall notify the owner, bona fide lien-holder and person in possession of the machine or machines at the time of seizure. Notice provided by certified mail must be mailed within 14 days after the seizure and must identify the procedure necessary to release the seized machine or machines. No machines so seized shall be released until the license fee and all storage and hauling and all other expenses have been paid in full. The hauling fee shall be \$125.00 for each machine and the storage fee shall be \$10.00 for each day for each machine in storage.

(b) ~~When any coin or currency-operated~~ a type I or type II amusement machine seized pursuant to subsection (a) of this section has not been claimed by the owner thereof within 90 days from the date of such seizure, title to the unclaimed machine shall vest in the city. The city may elect to donate the machine to a charitable organization, sell or otherwise dispose of the machine. If the licensing administrator shall elects to sell any such machine at public sale, after the city shall provide at least ten days' notice of the proposed sale date in writing to the owner, if he the owner can be found, and by at least one advertisement advertise once in a newspaper of general circulation in the city. All proceeds of the sale shall be credited to the general fund of the city and shall offset the fees, costs, and storage owed by the owner of the machines.



**Sec. 18-72. Hours of operation in industrial-zoned properties.**

Type I or type II amusement machines shall operate only between the hours of 7:00 a.m. and 9:00 p.m. within properties that are zoned industrial. If a type I or type II amusement machine is found to operate on the premises of a business outside of the permitted hours of operation, then the business shall cease operations after 9:00 p.m. and before 7:00 a.m. The city shall enforce this limitation of the hours of operation through a cease and desist order issued by the license administrator or the police chief, acting on behalf of the license administrator, immediately after the order is posted on the premises.

**Sec. 18-73. Payment of certificate of authorization fee; payment and performance bond; criminal background check and proof of corporate good standing for machine owner or supplier hereunder of type II amusement machines.**

A machine owner or supplier of a type II amusement machine shall obtain a certificate of authorization from the city as a non-exclusive franchise for one year by submitting a payment of certificate of authorization fee of \$2,500.00; payment and performance bond, letter of credit, cash or other security acceptable to the city in the amount of \$10,000.00 with the city as the obligee. Certificates of authorization shall be issued only to corporations in good standing and registered to do business in Florida, limited liability companies in good standing, partnerships in good standing, limited liability partnerships in good standing or limited liability limited partnerships in good standing or individuals. Certificates of authorization shall only be issued to a corporation or partnership where all corporate officers and directors, or partners, as the case may be, and by all stockholders who own, hold or control five percent or more of issued and outstanding stock in the corporation or beneficial interest therein, or individual owners, upon a criminal background check paid by the license-holder reveal that such officers, directors or stockholders of a corporation or corporate general partner; or partners of a partnership within the last five years preceding the application date or renewal date for a certificate of

authorization hereunder have not committed a felony or pled guilty or no contest to a felony involving gambling, fraud, theft, or controlled substances; or violation of any criminal law, including misdemeanors, involving the sale, distribution or use of amusement machines or gambling machines. Each year, proof of the renewal or new bond must be provided to the city and certificate of status from the Florida department of state and submission of a background check as described above. If the machine owner and supplier is the same person or entity, only one fee shall be paid and one bond shall be submitted accordingly. If the machine owner and supplier are different people or entities and the machine supplier, but not the machine owner, intends to lease, place or cause to be placed type II amusement machines within the city, then only the machine supplier shall obtain the certificate of authorization and comply with the requirements herein.

**Sec. 18-74. Additional penalty.**

(a) In addition to penalties provided in this code, no type I or type II amusement machine shall operate at a particular business location or site for one year from the date of the court order, order of the city council, code enforcement board or special master that determines or upholds that a business owner of the location, operator, machine owner or supplier of such amusement machine places, operates, or causes to be placed or operated, such amusement machine at that particular location or site in violation of sections 18-63, 18-64, 18-66, 18-68, 18-72 and 18-73.

(b) In addition to penalties provided in this code, no business shall operate at a particular business location or site for one year from the date of the court order, order of the city council, code enforcement board or special master that determines or upholds that a business owner of the location, operator, machine owner or supplier of such amusement machine places, operates, or causes to be placed or operated, such amusement machine at that particular location or site in violation of section 18-69.

(c) In addition to penalties provided in this code, no business shall operate at a particular business location or site for one year from the date of the court order, order of the city council, code enforcement board or special master

that determines or upholds that a business of the location, operator, machine owner or supplier of such amusement machine places, operates, or causes to be placed or operated, such amusement machine at that particular location or site in violation of section 18-69.

**Section 2:     **Repeal of Ordinances in Conflict.****

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3:     **Penalties.****

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4:     **Inclusion in Code.****

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

**Section 5:     **Severability Clause.****

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent

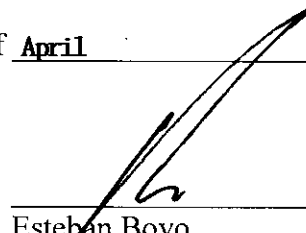
jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 6:     Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.


PASSED AND ADOPTED this 22nd day of April, 2008.

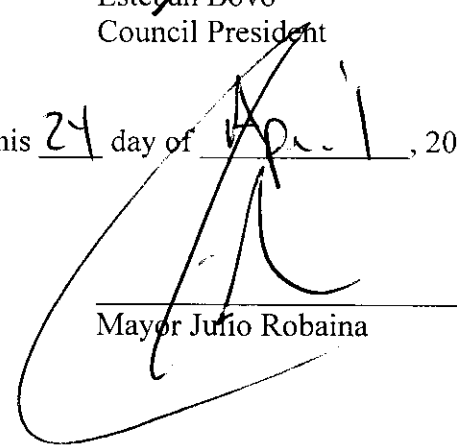
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
\_\_\_\_\_  
Esteban Bovo  
Council President

Attest:

Approved on this 24 day of April, 2008.

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

  
\_\_\_\_\_  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
William M. Grodnick, City Attorney

~~Strikethrough indicates deletion.~~ Underline indicates addition.

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes".